

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

OLEAN WHOLESALE GROCERY  
COOPERATIVE, INC.; BEVERLY  
YOUNGBLOOD; PACIFIC GROSERVICE,  
INC., DBA Pitco Foods; CAPITOL  
HILL SUPERMARKET; LOUISE ANN  
DAVIS MATTHEWS; JAMES WALNUM;  
COLIN MOORE; JENNIFER A. NELSON;  
ELIZABETH DAVIS-BERG; LAURA  
CHILDS; NANCY STILLER; BONNIE  
VANDERLAAN; KRISTIN MILLICAN;  
TREPco IMPORTS AND  
DISTRIBUTION, LTD.; JINKYOUNG  
MOON; COREY NORRIS; CLARISSA  
SIMON; AMBER SARTORI; NIGEL  
WARREN; AMY JOSEPH; MICHAEL  
JUETTEN; CARLA LOWN; TRUYEN  
TON-VUONG, AKA David Ton; A-1  
DINER; DWAYNE KENNEDY; RICK  
MUSGRAVE; DUTCH VILLAGE  
RESTAURANT; LISA BURR; LARRY  
DEMONACO; MICHAEL BUFF; ELLEN  
PINTO; ROBBY REED; BLAIR HYSNI;  
DENNIS YELVINGTON; KATHY  
DURAND GORE; THOMAS E.  
WILLOUGHBY III; ROBERT FRAGOSO;  
SAMUEL SEIDENBURG; JANELLE  
ALBARELLO; MICHAEL COFFEY;  
JASON WILSON; JADE CANTERBURY;  
NAY ALIDAD; GALYNA

No. 19-56514

D.C. No.  
3:15-md-02670-  
JLS-MDD

ORDER

ANDRUSYSHYN; ROBERT BENJAMIN;  
BARBARA BUENNING; DANIELLE  
GREENBERG; SHERYL HALEY; LISA  
HALL; TYA HUGHES; MARISSA  
JACOBUS; GABRIELLE KURDT; ERICA  
PRUESS; SETH SALENGER; HAROLD  
STAFFORD; CARL LESHER; SARAH  
METIVIER SCHADT; GREG STEARNS;  
KARREN FABIAN; MELISSA  
BOWMAN; VIVEK DRAVID; JODY  
COOPER; DANIELLE JOHNSON;  
HERBERT H. KLIEGERMAN; BETH  
MILLINER; LIZA MILLINER; JEFFREY  
POTVIN; STEPHANIE GIPSON;  
BARBARA LYBARGER; SCOTT A.  
CALDWELL; RAMON RUIZ; THYME  
CAFE & MARKET, INC.; HARVESTERS  
ENTERPRISES, LLC; AFFILIATED  
FOODS, INC.; PIGGLY WIGGLY  
ALABAMA DISTRIBUTING CO., INC.;  
ELIZABETH TWITCHELL; TINA  
GRANT; JOHN TRENT; BRIAN LEVY;  
LOUISE ADAMS; MARC BLUMSTEIN;  
JESSICA BREITBACH; SALLY  
CRNKOVICH; PAUL BERGER;  
STERLING KING; EVELYN OLIVE;  
BARBARA BLUMSTEIN; MARY  
HUDSON; DIANA MEY; ASSOCIATED  
GROCERS OF NEW ENGLAND, INC.;  
NORTH CENTRAL DISTRIBUTORS,  
LLC; CASHWA DISTRIBUTING CO. OF  
KEARNEY, INC.; URM STORES, INC.;  
WESTERN FAMILY FOODS, INC.;  
ASSOCIATED FOOD STORES, INC.;

GIANT EAGLE, INC.; MCLANE  
COMPANY, INC.; MEADOWBROOK  
MEAT COMPANY, INC.; ASSOCIATED  
GROCERS, INC.; BILO HOLDING, LLC;  
WINNDIXIE STORES, INC.; JANEY  
MACHIN; DEBRA L. DAMSKE; KEN  
DUNLAP; BARBARA E. OLSON; JOHN  
PEYCHAL; VIRGINIA RAKIPI; ADAM  
BUEHRENS; CASEY CHRISTENSEN;  
SCOTT DENNIS; BRIAN  
DEPPERSCHMIDT; AMY E.  
WATERMAN; CENTRAL GROCERS,  
INC.; ASSOCIATED GROCERS OF  
FLORIDA, INC.; BENJAMIN FOODS  
LLC; ALBERTSONS COMPANIES LLC;  
H.E. BUTT GROCERY COMPANY;  
HYVEE, INC.; THE KROGER Co.;  
LESGO PERSONAL CHEF LLC; KATHY  
VANGEMERT; EDY YEE; SUNDE  
DANIELS; CHRISTOPHER TODD;  
PUBLIX SUPER MARKETS, INC.;  
WAKEFERN FOOD CORP.; ROBERT  
SKAFF; WEGMANS FOOD MARKETS,  
INC.; JULIE WIESE; MEIJER  
DISTRIBUTION, INC.; DANIEL  
ZWIRLEIN; MEIJER, INC.; SUPERVALU  
INC.; JOHN GROSS & COMPANY;  
SUPER STORE INDUSTRIES; W. LEE  
FLOWERS & Co. INC.; FAMILY  
DOLLAR SERVICES, LLC; AMY  
JACKSON; FAMILY DOLLAR STORES,  
INC.; KATHERINE MCMAHON;  
DOLLAR TREE DISTRIBUTION, INC.;  
JONATHAN RIZZO; GREENBRIER

INTERNATIONAL, INC.; JOELYN A. SAN AGUSTIN; ALEX LEE, INC.; REBECCA LEE SIMOENS; BIG Y FOODS, INC.; DAVID TON; KVAT FOOD STORES, INC., DBA FOOD CITY; AFFILIATED FOODS MIDWEST COOPERATIVE, INC.; MERCHANTS DISTRIBUTORS, LLC; BROOKSHIRE BROTHERS, INC.; SCHNUCK MARKETS, INC.; BROOKSHIRE GROCERY COMPANY; KMART CORPORATION; CERTCO, INC.; RUSHIN GOLD, LLC, DBA The Gold Rush; UNIFIED GROCERS, INC.; TARGET CORPORATION; SIMON-HINDI, LLC; FAREWAY STORES, INC.; MORAN FOODS, LLC, DBA Save-A-Lot; WOODMAN'S FOOD MARKET, INC.; DOLLAR GENERAL CORPORATION; SAM'S EAST, INC.; DOLGENCORP, LLC; SAM'S WEST, INC.; KRASDALE FOODS, INC.; WALMART STORES EAST, LLC; CVS PHARMACY, INC.; WALMART STORES EAST, LP; BASHAS' INC.; WAL-MART STORES TEXAS, LLC; MARC GLASSMAN, INC.; WAL-MART STORES, INC.; 99 CENTS ONLY STORES; JESSICA BARTLING; AHOLD U.S.A., INC.; GAY BIRNBAUM; DELHAIZE AMERICA, LLC; SALLY BREDBERG; ASSOCIATED WHOLESALE GROCERS, INC.; KIM CRAIG; MAQUOKETA CARE CENTER;

GLORIA EMERY; ERBERT &  
GERBERT'S, INC.; ANA GABRIELA  
FELIX GARCIA; JANET MACHEN;  
JOHN FRICK; PAINTED PLATE  
CATERING; KATHLEEN GARNER;  
ROBERT ETEN; ANDREW GORMAN;  
GROUCHO'S DELI OF FIVE POINTS,  
LLC; EDGARDO GUTIERREZ;  
GROUCHO'S DELI OF RALEIGH;  
ZENDA JOHNSTON; SANDEE'S  
CATERING; STEVEN KRATKY;  
CONFETTI'S ICE CREAM SHOPPE;  
KATHY LINGNOFSKI; END PAYER  
PLAINTIFFS; LAURA MONTOYA;  
KIRSTEN PECK; JOHN PELS; VALERIE  
PETERS; ELIZABETH PERRON; AUDRA  
RICKMAN; ERICA C. RODRIGUEZ,  
*Plaintiffs-Appellees,*

and

JESSICA DECKER; JOSEPH A.  
LANGSTON; SANDRA POWERS;  
GRAND SUPERCENTER, INC.; THE  
CHEROKEE NATION; US FOODS, INC.;  
SYSCO CORPORATION; GLADYS,  
LLC; SPARTANNASH COMPANY;  
BRYAN ANTHONY REO,  
*Plaintiffs,*

v.

BUMBLE BEE FOODS LLC; STARKIST  
CO.; DONGWON INDUSTRIES CO.,  
LTD.,

*Defendants-Appellants,*

and

KING OSCAR, INC.; THAI UNION  
FROZEN PRODUCTS PCL; DEL  
MONTE FOODS COMPANY; TRI  
MARINE INTERNATIONAL, INC.;  
DONGWON ENTERPRISES; DEL  
MONTE CORP.; CHRISTOPHER D.  
LISCHEWSKI; LION CAPITAL  
(AMERICAS), INC.; BIG CATCH  
CAYMAN LP, AKA Lion/Big Catch  
Cayman LP; FRANCIS T.  
ENTERPRISES; GLOWFISCH  
HOSPITALITY; THAI UNION NORTH  
AMERICA, INC.,

*Defendants.*

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Filed August 3, 2021

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**ORDER**

THOMAS, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Federal Rule of Appellate Procedure 35(a) and Circuit Rule 35-3. The three-judge panel opinion is vacated.

Judges McKeown, Wardlaw, Berzon, Owens, Miller, Collins, Bress, and Forrest did not participate in the deliberations or vote in this case.